

JAMES L. HARDEN

IBLA 78-318

Decided May 22, 1978

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting drawing entry card lease offer W 62656.

Reversed.

1. Oil and Gas Leases: Applications: Generally

It is arbitrary and capricious for a BLM State Office to reject a drawing entry card, drawn with first priority, for the reason of trivial corrections on the card by means of a "white out" liquid which does not affect the appearance or feel of the card in any significant way and which corrections obviously were not intended to adversely affect the integrity of the drawing.

APPEARANCES: Robert H. Calkins, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James L. Harden has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated February 17, 1978, which rejected his drawing entry card (DEC) drawn first for Parcel WY 61 in the January 1978 simultaneous filing procedure, for the reason that the date of execution on the card had been corrected with an opaque liquid which altered the appearance and feel of the card, in violation of a State Office notice of September 9, 1977. 1/

1/ The State Office notice reads as follows:

PUBLIC NOTICE

"Effective immediately, this office will reject any simultaneous oil and gas drawing entry cards filed for Wyoming federal oil and gas leases which are altered or marked in any way, such as by stamping entry cards with embossed seals, by dusting cards with lubricating

Appellant admits that the date of execution of the DEC had been corrected by an opaque liquid, but contends that use of such a correcting fluid is common in all types of documents wherein small errors need to be whitened out and proper letters or figures written or stamped over them and that the correction on his DEC did not place the card within the purview of the "Public Notice."

In Margaret A. Ruggiero, 34 IBLA 171 (1978), this Board discussed the Wyoming State Office "Public Notice" of September 9, 1977, and found it to be contrary to BLM Instruction Memorandum No. 75-194, "Simultaneous Oil and Gas Lease Offers," April 25, 1975. In Ruggiero, it was stated:

However, even assuming, arguendo, that Instruction Memo No. 75-194 did not exist, and that the "Public Notice" was fully authoritative and properly promulgated, we would still be constrained to reverse the decisions of the Wyoming State Office in each of the appeals considered in this opinion. None of the DEC's in question are so marked or altered that they could reasonably be regarded as having been the subject of any method intended to alter the feel and appearance of these cards," as specified in the "Public Notice." For example, many of the cards were excluded from the drawing because a white, opaque fluid was used to "white-out" a typographical error for correction. This does not significantly alter the appearance or feel of the card in such a way that would distinguish [it] from all the others, and it certainly does not indicate that it was "intended" as a "method" of gaining an advantage in the drawing or to facilitate the perpetration of a fraud. We conclude that the exclusion of DEC's for such trivial alterations was arbitrary and capricious.

34 IBLA at 173.

powder before mailing, by using raised letters on names and addresses on entry cards, by folding cards in any way, or by wetting cards and allowing them to dry with a curl, or by any other method intended to alter the feel and appearance of these cards. Any card so altered or marked will not be included in the drawing and any filing fees accompanying the cards will be retained by the federal government as a service charge. The altered or marked cards will not be returned to the applicant until such time as they are no longer needed as evidence in case of a possible appeal."

[1] Our examination of the card in issue persuades us that use of "white out" liquid to correct the date of execution of the card did not materially alter the feel or the appearance of the card in any significant manner, so as to distinguish it from all other cards for the same parcel. We find that rejection of the DEC from appellant, drawn with first priority for Parcel WY 61, for the reason the card had been significantly altered is arbitrary and capricious.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed, and the case is remanded to the State Director, Wyoming, for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

